Supreme Court, U.S.
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No. 87-134

In the Supreme Court of the United States

OCTOBER TERM, 1987

UNITED STATES OF AMERICA, PETITIONER

v.

SAMSON E. SHONDE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY MEMORANDUM FOR THE PETITIONER

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Respondent does not make any serious attempt to defend the actions of the district court, as affirmed by the court of appeals. Instead, respondent makes two collateral arguments as to why the court should not grant certiorari in this case. Neither argument has merit.

1. Respondent argues (Br. 7-8, 10-11) that this case is unworthy of review because the government can simply reindict respondent. That is both irrelevant and wrong. It is irrelevant because the power of a district court judge to set aside a conviction, vacate a guilty plea and dismiss an indictment does not turn on whether or not the prosecution can start over again from scratch. It is wrong because, in dismissing the indictment, the district court clearly stated that his dismissal order was final (*i.e.*, with prejudice). In discussing how to prevent respondent from being deported, the district court said: "[M]y only remedy * * * is to dismiss the conviction—and that is permanent" (Pet. App. 22a).

2. Respondent also contends (Br. 8-9) that the government tacitly approved, in advance, all the district court's actions by signing the judgment and conviction order, which stated, in pertinent part: "If any deportation proceedings arise in the future, this Court will entertain a motion from the defendant to vacate his plea of guilty and dismiss the charge." The prosecutor's action did not have that effect. We are advised by the United States Attorney that, under local practice in federal court in Minnesota, the judgment and conviction order is sent to the prosecuting attorney for his signature to ensure that the order corresponds to the district court's directions at the time of sentencing. It is a way of double-checking the transcription of the court's instructions, not an opportunity for the attorney to express agreement or disagreement with the sentence given. This ministerial act cannot be said to have waived any objections to the order as written.

Nor do the statements of the Assistant United States Attorney at the time of sentencing constitute such a waiver. It is clear from the transcript (Pet. App. 18a) that the prosecutor raised no objection to an instruction to the Immigration and Naturalization Service that respondent's conviction not be used against him in any future deportation proceedings. But he can in no sense be said to have acquiesced in the series of subsequent actions taken by the district court. The government in fact directly and vigorously opposed those actions (Pet. App. 21a-22a).

For the reasons stated in the petition, it is respectfully submitted that the petition for a writ of certiorari should be granted.

CHARLES FRIED
Solicitor General

OCTOBER 1987

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